

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: BPS DIRECT, LLC, AND
CABELA'S, LLC, WIRETAPPING** : **MDL 3074**

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E.D.Pa. ACTION NOS.:
23-md-3074
22-cv-4709
23-cv-2282
23-cv-2287
23-cv-2293
23-cv-2294
23-cv-2295
23-cv-2306
23-cv-2338
23-cv-4008

ORDER

AND NOW, this 17th day of November 2023, upon considering Plaintiffs' Motion to compel (ECF No. 74) production of session data, Defendants' Opposition (ECF No. 76), following today's extended conference (ECF No. 80), and having balanced the burden and benefits of the requested discovery during our review of the substantial Motions to dismiss, it is **ORDERED** Plaintiff's Motion (ECF No. 74) is **GRANTED** in part but otherwise **DENIED** at this preliminary stage requiring:

1. Defendants shall produce, no later than **December 4, 2023**, all material specifically requested by the Plaintiffs (as supplemented in written requests emailed by no later than **November 21, 2023**) to fully understand the terms and symbols in the produced discovery including a data dictionary and otherwise describing the information provided to date as well as offering virtual deposition dates for Rule 30(b)(6) representatives on the produced discovery (including from the third party vendor) to be held between **January 3 and 26, 2024**;
2. Plaintiffs' request for additional data is **denied** at this preliminary stage but

Plaintiffs and Defendants shall forthwith meaningfully meet and confer (not over email) to more fully discuss how Plaintiffs can confirm and ascertain the data to fully address reasonably anticipated concerns with ascertainability and methodology (and maybe typicality or numerosity) necessary for our class certification review including the costs in allowing Plaintiffs' lead counsel and/or its expert's read-only review of the data (possibly in conjunction with the Defendants' expert or counsel may identify a third party monitor Rule 53 expert knowledgeable in the data to review the material and report to the parties) under a strict confidentiality agreement before Plaintiffs may again move to compel after we resolve the pending Motions to dismiss and otherwise be fully prepared to address next steps during our December 21, 2023 conference (ECF No. 67);

3. The parties shall confer consistent with our July 26, 2023 Order (ECF No. 52) so as to allow Plaintiffs to **show cause** in a Memorandum not exceeding five pages filed no later than **November 28, 2023** as to why we should not appoint the Honorable Thomas I. Vanaskie (Ret.) formerly of our Court of Appeals and Chief Judge for the United States District Court for the Middle District of Pennsylvania as a Rule 53 discovery master to allow the parties direct and repeated expedited study of their discovery concerns consistent with Judge Vanaskie's protocols and recommended Orders subject to timely objection within one business day of Judge Vanaskie's recommended Order; and,

4. Nothing in this Order shall be construed as precluding further discovery on the requested issues after the close of the pleadings if warranted.



KEARNEY, J.